

SERVED: March 29, 1999

NTSB Order No. EA-4751

UNITED STATES OF AMERICA  
**NATIONAL TRANSPORTATION SAFETY BOARD**  
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D.C.  
on the 24th day of March, 1999

_____	)	
JANE F. GARVEY,	)	
Administrator,	)	
Federal Aviation Administration,	)	
	)	
Complainant,	)	
	)	Docket SE-14696
v.	)	
	)	
DEAN C. ENGLESTEAD,	)	
	)	
Respondent.	)	
_____	)	

**ORDER DENYING RECONSIDERATION**

Respondent has petitioned for reconsideration of NTSB Order No. EA-4663, served June 11, 1998. In that opinion and order, we denied his appeal of the law judge's decision to both grant the Administrator's motion for summary judgment and affirm the 30-day suspension of his ATP certificate for deviating from an ATC clearance. The Administrator has filed a brief in reply. We deny the petition.

In his petition, respondent offers several conjectures as to why he may not have heard part of an air traffic control transmission, and he asserts that missing the middle portion of an ATC clearance is not uncommon. Reconsideration is not the time, however, for advancing theories as to why respondent deviated from a clearance, as such contentions do not constitute new matter. See 49 C.F.R. § 821.50(c). In any event, respondent admitted that he heard the beginning and end of the transmission, and he did not identify

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before the law judge any exculpatory basis for not hearing all of the clearance. See Administrator v. Friesen and Ashcraft, 7 NTSB 515 (1990) (respondents were presumed to have heard middle of transmission where they admitted to hearing beginning and end).

Respondent also contends that we erroneously described the instruction his aircraft received from Denver ATC when it became apparent that the aircraft was headed for a restricted area. We stated that, "[s]oon after the aircraft turned toward Colorado Springs, Denver ATC instructed Flight 922 to turn 40 degrees right to avoid penetrating the restricted area." EA-4663 at 4. He maintains that he "was not instructed to turn 40 degrees to the right." Petition for Reconsideration at 2. We have re-examined the record and find that the opinion and order is correct.<sup>1</sup>

We have fully considered all of respondent's petition and determined that he has identified no error in the Board's decision.<sup>2</sup>

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<sup>1</sup>The transcript of the communication reads as follows:

2205:23 [Denver skywest nine twenty two ah sir turn forty  
ARTCC] degrees right you're in well skywest nine  
twenty two whats your heading

2205:29 SKW922 we're gonna roll out heading ah north direct to  
colorado springs that was our clearance to flood  
direct colorado springs

2205:35 [Denver skywest nine twenty two fly heading three ARTCC]  
five zero to avoid the restricted area

Transcript, Denver ARTCC, April 3, 1996 ( Englestead Deposition, Exhibit 2, at 2).

<sup>2</sup>Respondent asserts that a suspension of his airman certificate would impose a financial hardship on him and his family. We have repeatedly expressed the view that " such considerations are not a proper basis for modifying an otherwise legitimate sanction." Administrator v. Van Ovost, NTSB Order No. EA-4681, n.9 (1998).

**ACCORDINGLY, IT IS ORDERED THAT :**

1. Respondent's petition for reconsideration is denied;  
and
2. The 30-day suspension of respondent's ATP certificate shall begin 30 days after the service date indicated on this order.<sup>3</sup>

HALL, Chairman, FRANCIS, Vice Chairman, HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above order.

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<sup>3</sup>For the purpose of this order, respondent must physically surrender his certificate to a representative of the Federal Aviation Administration pursuant to FAR § 61.19(f).